IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.1.2005

CORAM:

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No.24111 of 2004

K.Narayana Perumal .. Petitioner

-Vs-

1.State of Tamil Nadu
rep by the Secretary to Government
Education Department
Fort St. George,
Chennai 9.

2. The Director of School Education
Chennai 6.

3. The Chief Educational Officer
Nagercoil
Kanyakumari District.

4. T.V.Kumaran Thampi
Correspondent
Sarojini Memorial Hr. Sec. School
Orappanavilai
Ammandivilai Post
Kanyakumari District. .. Respondents

Writ petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.R.N.Amarnath
For R.4 : Mr.G.S.Thampi

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O R D E R

The prayer in the writ petition is to issue a writ of certiorarified mandamus, calling for the records relating to the proceedings of the fourth respondent in No.18/04, dated 16.8.2004 quash the same and direct the fourth respondent to reinstate the petitioner in service with all attendant and other benefits.

2. The case of the petitioner is as follows:

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(a) The petitioner passed M.A. (Tamil) in Kerala University, and, M.Ed. and M.Phil., (Tamil) in Madurai Kamaraj University. He was appointed by the Government of Kerala as a Primary Department Teacher on 30.1.1970 and after serving in various capacities, he retired from service on 30.6.2002 when he was working in Government Tamil Higher Secondary School, Chalai, Thiruvananthapuram, Kerala. As per the Service Rules in Kerala, he retired from service on completion of 55 years of age.

(b) The fourth respondent intimated the second respondent the proposal to appoint the petitioner as Head Master of the Sarojini Memorial Higher Secondary School by letter dated 30.1.2003 and sought for permission for the same. Later, on 31.5.2003, the fourth respondent appointed the petitioner as a Head Master of the said School, and intimated the second respondent about the appointment and sought for approval. By Order dated 6.10.2003, the second respondent refused to grant approval as the Rules do not provide appointment of a retired teacher as Head Master. By letter dt.30.10.2003, the fourth respondent requested the second respondent to reconsider the decision. That was also rejected on the basis of G.O.RT.No.305, dt.10.8.1998. As the G.O. does not prohibit the appointment of retired teachers from other States, the fourth respondent filed an appeal on 19.5.2004 questioning the Order passed by the second respondent; the appeal is still pending before the first respondent. While so, due to extraneous consideration, the fourth respondent removed the petitioner from service by Order dt.16.8.2004. Inasmuch the Government Order does not prohibit a retired person from other States from being appointed as Headmaster in Higher Secondary School in Tamil Nadu, his appointment should be approved. The petitioner fulfils all the requisite qualifications for appointment as Head Master, namely, ten years of teaching experience as P.G.Assistant and B.T.Assistant. The Order passed by the fourth respondent terminating his services is illegal and liable to be set aside.

3. The fourth respondent has filed a counter as follows:

The fourth respondent denied the averments made in the affidavit filed by the petitioner. He further stated that the petitioner is a retired teacher from Kerala; he approached him for appointment as Headmaster of the School. The Management expressed its inability as there is no provision in the Rules to appoint a retired person as Headmaster. But, he interpreted two G.Os and said that he was eligible to be appointed. The Management made it clear that it would not be in a position to pay the salary in case department refuses approval for his appointment. The petitioner also made a declaration that he will not claim any salary from the management if his appointment was not approved by the department. The Management, by way of abundant caution, wrote a letter on 30.1.2003 to the Director of School Education seeking prior permission for appointing the petitioner as Headmaster; but, the prior approval was not given. Since the petitioner emphasised the solemn promise, the Correspondent issued a formal appointment Order

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on 31.5.2003. While so, on 2.6.2003, the petitioner gave a letter in writing that "he will not claim any salary from the management for performing duty, if his appointment is not approved by the Department". The Director of School Education rejected the request for approval on the ground that the request of the Secretary of the School cannot be accepted as there is no provision in the Rules for appointment of a person, who retired on attaining the age of super-annuation. Therefore, he was relieved. Onceagain, at the request of the petitioner, the Correspondent sent another representation to the second respondent to reconsider his decision. But, again it was rejected by the second respondent by his Proceedings dt.6.1.2004. In that letter it has been clearly stated that as there is no provision in the Rules for appointment of persons in the aided High/Higher Secondary School, who retired after service in other States, the request of the Correspondent was rejected." The request of the petitioner, in formal appeal, was sent to the Government on 19.5.2004. In the interest of the Institution, he was relieved on 16.8.2004. Thereafter, the seniormost P.G.Assistant was appointed as Headmaster. Hence, the claim of the petitioner is not legal and the petition is liable to be dismissed.

4. The learned counsel for the petitioner submitted that there is no prohibition for appointment of retired teacher from Kerala in a school in Tamil Nadu as there is no upper age limit for such appointment when he is fully qualified otherwise. Therefore, he contended that the impugned order is not legally sustainable.

5. Mr. G.S.Thambi, learned counsel for the 4th respondent, submitted that the petitioner was informed even before his appointment that such appoint was not possible, and only on his insistence he was appointed, that too, subject to approval. The fourth respondent, in fact, wrote a letter seeking for prior approval even before his appointment. But, that approval was not given and subsequently he was appointed on a condition that he should not claim benefits, if his appointment is not approved. In the impugned Order itself it is clearly stated that those persons who retired on super-annuation in other States cannot be appointed as Headmaster in the schools in Tamil Nadu. Therefore, the request for approval was rejected.

6. The petitioner has not cited any decision of this Court or any Government Order to substantiate his contention that there is no bar for appointing a retired person in another State as Headmaster in the schools in Tamil Nadu. The instances he has given in his communication to the Secretary to Government does not give him a right since a mistake or an act in violation of the Rule cannot be a valid precedent.

7. Appointment of Headmaster is provided under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, which reads as follows:

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"(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of teachers shall be made by the following methods:-

(i) Promotion from among the qualified teachers in that school.

(ii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Training Institutions setting out the reasons for such appointment. In respect of corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule."

'Headmaster' is also 'Teacher' for the purpose of this Rule. Hence, promotion to the post of Headmaster shall be made from among the qualified teachers in that School. Only if no qualified and suitable candidates are available in that School, teachers from any other school can be considered. Even if no teacher from any other school is available, only then 'direct recruitment' can be resorted to. Even while 'direct recruitment' is resorted, prior approval is necessary from the Chief Educational Officer.

8. Under those circumstances, when the other qualified persons were available in the School, appointment of this petitioner as Headmaster is contrary to the Rules. Therefore, the writ petition is devoid of merits and hence it is dismissed. No costs. Consequently, WPMP No.29264 of 2004 is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Secretary to Government
Education Department
Fort St. George,
Chennai 9.

2. The Director of School Education
Chennai 6.

3. The Chief Educational Officer
Nagercoil
Kanyakumari District.

One cc to Mr.R.N.Amarnath, Advocate SR.2591.

One cc to the Govt. Pleader SR.2336.

WP 24111 of 2004

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